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In re Application of
CASHMAN et al
U.S. Application No.: 10/084,592
Filing Date: February 25, 2002
Priority Date: 23 January 2002
Attorney Docket No.: 56510.10002
For: METHOD AND COMPOSITION FOR
DELIVERY OF MEDICANTS TO
ANIMALS

MAY 09, 2008

OFFICE OF PETITIONS

DECISION

This decision is in response applicants' petition under 37 CFR 1.137(a), or in the alternative petition under 37 CFR 1.137(b) filed on March 12, 2007.

BACKGROUND

On February 25, 2002, applicants filed the subject utility application. No fees or declaration was submitted.

On April 18, 2002, a Notice to File Missing Parts requesting the basic filing fee and surcharge fee was mailed.

On November 26, 2003, a Notice of Abandonment Under 37 CFR 1.53(f) or (g) was mailed for failing to reply to the Notice to File Missing Parts.

On October 7, 2005, a revocation of power of attorney and change of a correspondence address was submitted via facsimile.

On March 12, 2007, applicants filed a petition to revive under 37 CFR 1.137(a), or in the alternative 37 CFR 1.137(b) which was accompanied by authorization to charge any required fees to Deposit Account No. 11-0160.

On April 9, 2008, at the request of the undersigned, applicants filed supplemental evidence in support of the petition filed March 12, 2007.

DISCUSSION

Applicants request that the subject application be revived pursuant to 37 CFR

1.137(a), or in the alternative 37 CFR 1.137(b).

Petition to Revive an Unavoidably Abandoned Application Under 37 CFR 1.137(a)

A petition to revive an abandoned application pursuant to 37 CFR 1.137(a) must be accompanied by: (1) the required reply; (2) a showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable; (3) any terminal disclaimer required pursuant to 37 CFR 1.137(c); and (4) the petition fee.

Applicants filed an appropriate response by paying the proper basic filing fee, search fee, examination fee and surcharge fee for a small entity. These fees have been charged to Deposit Account No. 11-0160 as authorized. A terminal disclaimer is not required. The petition fee has been paid.

As such, items (1), (3) & (4) of 37 CFR 1.137(a) are complete

Regarding item (2), applicants claim that the delay in responding to the Office Action resulted from a deliberate deception by the former counsel. Applicants submitted evidence showing that the former counsel may have intentionally misled them on the status of the application after the above-captioned application became abandoned on November 26, 2003.

However, applicants have not provided sufficient evidence showing that the delay in responding to the Notice to File Missing Parts mailed April 18, 2002 prior to the receipt of the Notice of Abandonment was unavoidable.

Therefore, the requirement in item (2) of 37 CFR 1.137(a) that applicants show that the entire delay in entering the national stage was unavoidable has not been met.

For the reason listed above, applicants' petition for revival pursuant to 37 CFR 1.137(a) is **DISMISSED** without prejudice.

Petition to Revive an Unintentionally Abandoned Application Under 37 CFR 1.137(b)

Applicants' petition to revive under 37 CFR 1.137(b) filed in the alternative is hereby **GRANTED** as follows:

The required petition fee for a small entity has been charged to Deposit Account No. 11-0160 as authorized. Applicants make the required statement pursuant to 37 CFR 1.137(b)(3). A terminal disclaimer is not required.

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Accordingly, all requirements under 37 CFR 1.137(b) have been satisfied.

This application is being forwarded to the Office of Patent Application Processing for continued processing.

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